IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 26-02-2007

CORAM

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

WRIT PETITION No.1347 OF 2002

M/s.Himalaya Granites Limited,
rep.by its General Manager (Commercial),
P.S.Krishnamurthy,
Now No.70, Old No.7,
Sriman Srinivasan Cross Street,
Alwarpet,
Chennai-600 018. ... Petitioner

-vs-

1.The Assistant Commissioner of Central Excise,
Chengalpattu Division,
130-B, Mudichur Road,
West Tambaram,
Chennai - 600 045.

2.The Commissioner of Central Excise (Appeals),
No.121, Nungambakkam High Road,
Chennai - 600 034.

3.The Customs, Excise and Gold (Control)
Appellate Tribunal,
Shastri Bhavan Annexe Building,
First Floor, 26, Haddows Road,
Chennai - 600 006. .. Respondents

Petition under Article 226 of the Constitution of India, praying for issuance of a writ of certiorari, to call for the records of the first respondent ending with order-in-original No.8/2000, dated 27.1.2000, which is confirmed by the second respondent in Order-in-Appeal No.176/2000-M (III), dated 27.12.2000, and confirmed by the third respondent in Appeal No.E/ST/189/01 in E/351/01 and Final Order No.1247/2001, Stay Order No.296/2001, dated 1.8.2001, and to quash the same.

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For petitioner : Mr.A.K.Jayaraj

For respondents: Mr.R.Thirugnanam,
Spl.Govt.Pleader.

O R D E R

Learned counsel for the petitioner strenuously contended that though the Division Bench judgment was rendered in the context of Rule 147 of the Central Excise Rules, the Division Bench had not considered Section 23 of the Customs Act and that Division Bench judgment has been considered by the authorities below, including CEGAT, to come to the conclusion that the petitioner is not entitled to the remission under Section 23 of the Customs Act.

2. I have heard the argument of the learned counsel for the petitioner and also perused the material on record.

3. It is true that the Division Bench judgment referred to by the respondent has been rendered with reference to the statutory provision made under Rule 147 of the Central Excise Rules. But, even assuming that the Division Bench judgment is not applicable to the facts of the present case, the petitioner, who is claiming benefit under Section 23 of the Customs Act, should make out a case before the authorities that the theft occurred in the bonded warehouse of the petitioner would come within the purview of Section 23, so as to have the benefit of remission in its favour. It is needless to say that the statutory provision has not, in any event, suggested the word 'theft' within its purview. The Section has been couched in a manner to the effect where it is shown to the satisfaction of the Assistant Collector of Customs that any imported goods have been lost or destroyed, at any time before clearance for home consumption, the Assistant Collector of Customs shall remit the duty on such goods. The terminology used in the provision 'lost' or 'destroyed' is not applicable to the facts of the present case, as it is stated that there was a theft, occurred in the bonded warehouse of the petitioner. So, the one and only point to be considered is, whether the petitioner is entitled for remission, because of theft ? The necessary corollary would be, whether the terminology 'lost' or 'destroyed', used in the Section, would encompass the act of theft.

4. Learned counsel for the petitioner, except placing an argument that the Division Bench judgment is not rendered with reference to Section 23, not able to convince the Court that Section 23 of the Act would also comes to the aid of the

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petitioner in the event of theft, in spite of repeated adjournments granted to argue the case that the incident of theft would come within the purview of the terminology 'lost', or 'destroyed', used in the Section.

5. As the counsel for the petitioner has not made out any case to sustain, this Court is not able to grant any relief in favour of the petitioner. Therefore, this Writ Petition is dismissed. No costs. Consequently, the connected W.M.P.No.1875 of 2002 is also dismissed.

dixit

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1.The Assistant Commissioner of Central Excise,
Chengalpattu Division,
130-B, Mudichur Road,
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Chennai - 600 045.

2.The Commissioner of Central Excise (Appeals),
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Shastri Bhavan Annexe Building,
First Floor, 26, Haddows Road,
Chennai - 600 006.

+ 1 cc to Mr. R. Thirugnanan, SCGSC Advocate, SR No.11887

+ 1 cc to Mr. A.K. Jayaraj, Advocate, SR No.11667

SSV(CO)
SR/12.3.2007 W.P.No.1347 OF 2002

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